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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SOHIL KARIMY,

Plaintiff,

vs.

ASSOCIATED GENERAL
CONTRACTORS OF AMERICA -
SAN DIEGO CHAPTER, INC.,
APPRENTICESHIP & TRAINING
TRUST FUND,

Defendants.

NO. '08 CV 0297 L CAB

COMPLAINT FOR VIOLATION OF
THE CIVIL RIGHTS ACT, TITLE VII,
THE FAIR LABOR STANDARDS ACT
AND RELATED STATE CLAIMS
[42 U.S.C. §§ 1981, 2002e-2, 29 U.S.C. §
216(b)]

DEMAND FOR JURY TRIAL

[JURISDICTION AND VENUE]

1. This Court has original subject matter jurisdiction over this action pursuant to 42 U.S.C. §§ 1981 and 2002e-5(f), for the claims of employment discrimination, and under 29 U.S.C. § 216(b) for the failure to pay overtime. This Court has supplemental jurisdiction over the remaining state claims pursuant to 28 U.S.C. § 1367(a) as arising from the same core facts, namely for the same acts of discharging plaintiff and failing to pay overtime. Venue is proper in district, as the

1 defendant has its principal place of business in this district, and the contract of
2 employment was entered into and terminated in this district.

3
4 [PARTIES]

5
6 2. Plaintiff Sohil Karimy (Karimy) is an individual residing within this
7 district.

8
9 3. Defendant Associated General Contractors of America – San Diego
10 Chapter, Inc., Apprenticeship & Training Trust Fund (Training Trust), is an express
11 trust and an employee welfare plan, as defined in the Employee Retirement Income
12 Security Act (ERISA) § 2(1), 29 U.S.C. § 1001(1). The Training Trust has its
13 principal place of business in San Diego County, and provides apprenticeship and
14 training programs in San Diego, Imperial, Orange and Riverside Counties,
15 California.

16
17 4. The “plan sponsor” of the Training Trust is the Associated General
18 Contractors of America – San Diego Chapter, Inc. (AGC), which is an association of
19 employers in the construction industry. Plaintiff is informed and believes that the
20 AGC is incorporated in California as a non-profit corporation.

21
22 [FACTS COMMON TO ALL CLAIMS]

23 APPRENTICESHIP PROGRAMS PROVIDED BY THE TRAINING TRUST

24
25 5. The Training Trust is an express trust governed by a Board of Trustees,
26 for the purpose of providing apprenticeship and training programs in the construction
27 industry. It currently offers apprentice programs in the following construction crafts:
28 Carpenter, Cement Mason, Drywall Finisher, Drywall Lather, Heavy Equipment

1 Operator, Laborer, and Painter. To conduct these apprentice program, the Training
2 Trust has employed in excess of 20 persons at all relevant times, within the State of
3 California, to provide training, coordination, administrative and clerical functions.
4

5 6. The Training Trust is sponsored by the AGC, from whose membership
6 the Trustees of the Training Trust are chosen. Members of the AGC (and other
7 employers in the construction industry) may send their employees for training, or
8 request to employ registered apprentices, under the apprenticeship programs of the
9 Training Trust, and thereby obtain the advantages of the employment of these
10 apprentices on public works, as described below.
11

12 7. The Training Trust has been approved as a recognized apprenticeship
13 program by the Division of Apprenticeship Standards of the Department of Industrial
14 Relations of the State of California (DIR), pursuant to California Labor Code § 3075.
15 The Training Trust has also been approved as a recognized apprenticeship program
16 by the Office of Apprenticeship Training, Employment and Labor Services of the
17 Department of Labor of the United States of America (DOL), pursuant to the
18 National Apprenticeship Act of 1937 (Fitzgerald Act), 29 U.S.C. §§ 50, *et. seq.*, and
19 implementing regulations, 29 C.F.R. Part 29.
20

21 8. As a result of the DIR certification as an apprenticeship program by the
22 DIR, employers who contribute to the Training Trust may employ apprentices
23 enrolled in the apprenticeship program, and pay significantly lower wage rates on
24 public works contracted by a public agency in California. Similarly, certification as
25 an apprenticeship program by the DOL allows employers who contribute to the
26 Training Trust to employ apprentices enrolled in the apprenticeship program, and
27 pay significantly lower wage rates on public works contracted by an agency of the
28 United States of America.

1 9. Apprentices enrolled in the apprenticeship programs of the Training
2 Trust are required by both federal and state regulation to enter into a written
3 apprenticeship agreement, which is referred to as being "indentured." The
4 apprentices are required to complete a certain amount of on-the-job training with
5 their employer, and to complete a certain number of hours of classroom training in
6 specified subjects, provided by the Training Trust. These minimum standards for
7 apprentices in each craft must be specified in the forms submitted by the Training
8 Trust to the DIR and DOL for approval of each of their apprenticeship programs, and
9 the Training Trust's ability to provide such training is an essential element for
10 approval by both the DIR and DOL.

11
12 10. The Training Trust receives contributions from employers participating
13 in the Trust, including AGC members. These contributions are allowed to be
14 credited toward the obligation of these employers to pay prevailing wages on public
15 works (both federal and state), in lieu of cash wages.

16
17 11. The Training Trust also receives "Montoya Funds" from the State of
18 California for classroom training. The Training Trust submits a form listing the
19 hours of classroom training actually provided to each apprentice by the instructors
20 employed by the Training Trust, to a "Local Education Agency" (LEA) as defined in
21 California Labor Code § 3074. The LEA then submits those forms to the State of
22 California. Pursuant to California Education Code § 8152(e), the State of California
23 may only reimburse the LEA for hours of instruction actually provided to indentured
24 apprentices under an approved apprenticeship program, at a specified hourly rate per
25 apprentice. The LEA deducts an administrative fee from these funds, and sends the
26 balance to the Training Trust.

27
28 12. The Training Trust is required to report the names of its registered

1 apprentices to the DIR and DOL. The Training Trust is also obligated to report to
2 the DIR and the DOL when an apprentice either is terminated from the
3 apprenticeship program, or graduates. Under both federal and state regulation, an
4 indentured apprentice may only graduate from the apprenticeship program, to
5 become a journeyman in that craft, upon satisfactory completion of on-the-job and
6 classroom training, as specified in the written apprenticeship program standards
7 which the Training Trust has submitted to the DIR and DOL.

8 9 EMPLOYMENT OF KARIMY

10
11 13. Plaintiff was employed by the Training Trust as a Coordinator from
12 August 2003 through April 2006, and as a Director of Operations and Education
13 from April 2006 until his involuntary termination in September 2007. Throughout
14 his employment with Defendants, Plaintiff performed his job in a capable and
15 competent manner and was regularly awarded merit salary increases, bonuses, and
16 positive evaluations. On September 17, 2007 Plaintiff's contract of employment was
17 involuntarily terminated by the Training Trust.

18
19 14. As "Coordinator," some of Karimy's duties involved recruiting
20 contractors, recruiting apprentices, and informing apprentices and contractors of the
21 applicable laws. He was listed by the Training Trust as a "non-exempt" employee,
22 and paid a salary in the range of \$55,000.00 to \$65,000.00 per year.

23
24 15. As "Director of Operations and Education," some of Karimy's duties
25 involved preparing apprenticeship class schedules, attending meetings, recruiting
26 contractors, working with apprentices, and performing several human resources
27 functions.

28

1 16. Plaintiff's salary, at the time of his termination, was \$80,000.00 per
2 year. He was also entitled to benefits as part of his compensation.

3
4 17. Defendant fraudulently submitted false claims to state agencies to
5 receive state funds. Specifically, Defendant knowingly submitted claims indicating
6 that apprentices were receiving more hours of education than apprentices were in fact
7 receiving in order to receive additional Montoya funds from the State.

8
9 18. Defendant also fraudulently gave apprentices credit towards graduation
10 for classes they never took, or skills they did not have. In some cases, apprentices
11 were given credit for classes which the Training Trust did not even provide. These
12 fraudulent credits were given at the request of AGC members, including trustees of
13 the Training Trust, and not for any legitimate reason.

14
15 19. Defendant also fraudulently back-dated the registration of some
16 apprentices, to a date before they were actually indentured. This was done at the
17 request of AGC members, so those AGC members could pay those employees at the
18 lower apprentice rate, even though they were not really indentured as apprentices at
19 that time.

20
21 20. During his employment, Plaintiff made several complaints regarding the
22 submission of fraudulent claims to the state, fraudulent credits given, and fraudulent
23 back-dating of the registration of apprentices. Plaintiff was ordered to assist in these
24 fraudulent activities, despite his protests. As a direct result of his complaints,
25 Plaintiff was retaliated against in the form of a substantial increase in work-load, a
26 negative evaluation, and wrongful termination in violation of public policy.

27
28 21. In response to Plaintiff's complaints regarding Defendant's fraudulent

1 practices, Plaintiff was told by the Executive Director of the Training Trust that if
2 Plaintiff did not like the way things were done, Plaintiff should leave.

3
4 22. Also in response to several of Plaintiff's complaints regarding
5 Defendant's fraudulent practices, the Trust Chairman, Tom Brown, reprimanded
6 Plaintiff and told him that Plaintiff's "brown eyes, brown hair, and middle eastern
7 culture may not work in sunny southern California with blue eyes, blond haired
8 people, and maybe you [Karimy] might need to leave." This was only one of several
9 similar remarks made by his superiors regarding Karimy's ethnic background.

10
11 23. In July 2007, Plaintiff met with Defendants' Trust Chairman and
12 Executive Director, expressed his concerns regarding Defendant's fraudulent
13 activities, and requested to meet with the Trustees. As a result, in August, 2007,
14 Plaintiff was given a substantially heightened workload, to be completed within one
15 week. As a direct result of Plaintiff's complaints, Defendant gave Plaintiff the only
16 negative work evaluation given to Plaintiff throughout his employment with
17 Defendant. Plaintiff was the only employee evaluated at this time.

18
19 24. In September 2007, Plaintiff again requested to meet with the Trustees
20 on September 17, 2007 to discuss Defendant's submission of false claims and other
21 inappropriate conduct described above. His request was denied.

22
23 25. Plaintiff's employment was terminated by the Training Trust on
24 September 17, 2007.

25
26 / / /

27 / / /

28 / / /

[FIRST CLAIM FOR RELIEF]
[VIOLATION OF THE CIVIL RIGHTS ACT]
[42 U.S.C. § 1981]

26. Plaintiff realleges and incorporates by reference all prior allegations.

27. Plaintiff's contract of employment with the Training Trust was a "contract" protected by the Civil Rights Act, 42 U.S.C. § 1981.

28. Plaintiff is of Persian ancestry, with distinctive Middle-Eastern features, and a noticeable accent. He was perceived by his supervisors at the Training Trust as other than a "white citizen." This was made clear by the statement of Tom Brown, Chairman of the Training Trust, that Karimy's "brown eyes, brown hair, and middle eastern culture may not work in sunny southern California with blue eyes, blond haired people, and maybe you [Karimy] might need to leave."

29. The Training Trust had no legal reason to terminate Karimy's employment contract.

30. The Training Trust terminated Karimy's employment contract without legal justification, because (at least in part) that he was perceived as not a "white citizen." By so doing it violated 42 U.S.C. § 1981.

31. As a result of defendant's violation of 42 U.S.C. § 1981, plaintiff has been deprived of the benefits of his employment contract, and has suffered humiliation and emotional distress.

32. Defendant's violation of the Civil Rights Act was intentional and meant

1 to cause harm to plaintiff. Plaintiff is therefore entitled to recover punitive damages
2 for this violation.

3
4 33. Pursuant to 42 U.S.C. § 1988(b), plaintiff is also entitled to recover his
5 attorney fees and costs from defendant.

6
7 [SECOND CLAIM FOR RELIEF]
8 [INTENTIONAL EMPLOYMENT DISCRIMINATION]
9 [42 U.S.C. §§ 2002e-2 and 2002e-5(f)]
10

11 34. Plaintiff realleges and incorporates by reference all prior allegations.
12

13 35. Plaintiff is of Persian ethnicity, which was perceived by his supervisors
14 at the Training Trust as other than a “white citizen.” This was made clear by the
15 statement of Tom Brown, Chairman of the Training Trust, that Karimy’s “brown
16 eyes, brown hair, and middle eastern culture may not work in sunny southern
17 California with blue eyes, blond haired people, and maybe you [Karimy] might need
18 to leave.”
19

20 36. The Training Trust had no legal reason to terminate Karimy’s
21 employment contract.
22

23 37. The Training Trust discharged Karimy from his employment, without
24 legal justification, because (at least in part) of his ethnicity, in violation of 42 U.S.C.
25 § 2002e-2(a)(1).
26

27 38. As a result of his illegal discharge, Karimy has suffered lost wages and
28 benefits, future earnings, humiliation and emotional distress.

1 39. Defendant's violation of 42 U.S.C. § 2002e-2(a)(1) was intentional and
2 meant to cause harm to plaintiff. Plaintiff is therefore entitled to recover punitive
3 damages for this violation.

4
5 40. Pursuant to 42 U.S.C. § 2002e-5(k), plaintiff is also entitled to recover
6 his attorney fees and costs from defendant.

7
8 41. On or about January 16, 2008, Karimy filed a charge with the U.S.
9 Equal Opportunity Commission (EEOC), which was given charge number
10 488-2008-00198. The charge was concurrently filed with the California Fair
11 Employment and Housing Commission (FEHC).

12
13 42. On February 1, 2008, at his request, the EEOC issued a "Notice of Right
14 To Sue" as to his charge. A copy of that Notice of Right to Sue is attached here as
15 Exhibit 1.

16
17 43. On February 1, 2008, at his request, the FEHC issued a "Notice of Right
18 to Sue" as to his charge. A copy of that Notice of Right to Sue is attached here as
19 Exhibit 2.

20
21 [THIRD CLAIM FOR RELIEF]
22 [FAIR LABOR STANDARDS ACT]
23 [29 U.S.C. § 216(b)]
24

25 44. Plaintiff realleges and incorporates by reference all prior allegations.

26
27 45. Plaintiff's employment was not exempt from the requirement to pay
28 weekly overtime, under any provision of the Fair Labor Standards Act (FLSA), 29

1 U.S.C. §§ 201 to 219, and implementing regulations. In fact, Defendant recognized
2 Plaintiff's non-exempt status as a Coordinator in writing.

3
4 46. Throughout his employment with Defendant, Plaintiff frequently
5 worked more than forty hours per week with the knowledge, consent and
6 acquiescence of the Defendants' supervisors, performing tasks which have been
7 assigned to him.

8
9 47. Plaintiff was not generally paid at the rate of time-and-one-half his
10 regular rate of pay for all hours worked in excess of forty per week. Plaintiff
11 requested overtime pay on numerous occasions. On at least one occasion he was
12 paid overtime as requested. However, on no other occasion was he paid overtime for
13 time worked over forty in a week.

14
15 48. Defendant's failure to pay overtime to Plaintiff, and other employees of
16 Defendant, is in violation of 29 U.S.C. §§ 207(a) and 215(a)(2).

17
18 49. Pursuant to 29 U.S.C. § 216(b), the Plaintiff is entitled to recover his
19 unpaid overtime wages, and an equal amount of liquidated damages.

20
21 50. Pursuant to 29 U.S.C. § 216(b), Plaintiff is entitled to recover a
22 reasonable amount of attorney fees, and costs incurred in this action.

23
24 [FOURTH CLAIM FOR RELIEF]

25 [CALIFORNIA FAIR EMPLOYMENT & HOUSING ACT]

26 [CA Government Code §§ 12940 and 12965]

27
28 51. Plaintiff realleges and incorporates by reference all prior allegations.

1 52. This Court has supplemental jurisdiction over this claim, as arising
2 under the same facts as the First and Second Claims for Relief.

3
4 53. Plaintiff is of Persian ancestry, which was perceived by his supervisors
5 at the Training Trust as other than a "white citizen." This was made clear by the
6 statement of Tom Brown, Chairman of the Training Trust, that Karimy's "brown
7 eyes, brown hair, and middle eastern culture may not work in sunny southern
8 California with blue eyes, blond haired people, and maybe you [Karimy] might need
9 to leave."

10
11 54. The Training Trust had no legal reason to terminate Karimy's
12 employment contract.

13
14 55. The Training Trust discharged Karimy from his employment, without
15 legal justification, because (at least in part) of his ancestry, in violation of California
16 Government Code § 12940(a).

17
18 56. As a result of his illegal discharge, Karimy has suffered lost wages and
19 benefits, future earnings, humiliation and emotional distress.

20
21 57. Defendant's violation of California Government Code § 12940(a) was
22 intentional and meant to cause harm to plaintiff. Plaintiff is therefore entitled to
23 recover punitive damages for this violation.

24
25 58. Pursuant to California Government Code § 12965(b), plaintiff is also
26 entitled to recover his attorney fees and costs from defendant.

27
28 59. On or about January 16, 2008, Karimy filed a charge with the U.S.

1 Equal Opportunity Commission (EEOC), which was given charge number
2 488-2008-00198. The charge was concurrently filed with the California Fair
3 Employment and Housing Commission (FEHC).

4
5 60. On February 1, 2008, at his request, the EEOC issued a "Notice of Right
6 To Sue" as to his charge. A copy of that Notice of Right to Sue is attached here as
7 Exhibit 1.

8
9 61. On February 1, 2008, at his request, the FEHC issued a "Notice of Right
10 to Sue" as to his charge. A copy of that Notice of Right to Sue is attached here as
11 Exhibit 2.

12
13 [FIFTH CLAIM FOR RELIEF]
14 [CALIFORNIA OVERTIME LAWS]
15 [CA LABOR CODE § 510; IWC Order No. 4-2001]
16

17 62. Plaintiff realleges and incorporates by reference all prior allegations.
18

19 63. This Court has supplemental jurisdiction over this claim, as arising
20 under the same facts as the Third Claim for Relief.

21
22 64. During times relevant to this action, California law, as set forth in
23 California Labor Code § 510 and the Wage Orders of the Industrial Welfare
24 Commission, including Wage Order No. 4-2001, and elsewhere, provides that if an
25 employee works more than 40 hours per week, or more than 8 hours per day, that
26 employee is entitled to overtime compensation at the rate of one and one-half of his
27 or her ordinary hourly rate for each overtime hour worked, and in some
28 circumstances twice his or her ordinary rate.

65. Plaintiff's employment was not exempt from the requirement to pay overtime, under any provision of California law and implementing regulations. In fact, Defendant recognized Plaintiff's non-exempt status as a Coordinator in writing.

66. Throughout his employment, Plaintiff frequently worked more than eight hours per day and more than forty hours per week with the knowledge, consent and acquiescence of the Defendants' supervisors, performing tasks which have been assigned to him.

67. Plaintiff was not generally paid at the rate of time-and-one-half his regular rate of pay for all hours worked in excess of eight hours per day or forty per week. Plaintiff requested overtime pay on numerous occasions. On at least one occasion he was paid overtime as requested. However, on no other occasion was he paid overtime for time worked over eight in a day.

68. Pursuant to California Labor Code § 1194, Plaintiff is entitled to the balance of the full amount of overtime wages owed them, calculated at the proper rate, together with interest from the date those wages were due.

69. Pursuant to California Labor Code § 1194(a), Plaintiff is entitled to recover his reasonable attorney fees and costs.

[SIXTH CLAIM FOR RELIEF]
[FAILURE TO PAY WAGES UPON TERMINATION]
[CA Labor Code § 203]

70. Plaintiff incorporates by reference all prior allegations.

1 71. This Court has supplemental jurisdiction over this claim, as arising
2 under the same facts as the Third Claim for Relief.

3
4 72. California Labor Code section 203 requires every employer to pay an
5 employee whose employment has ceased all wages owed to the employee at stated
6 periods of time, in no event later than 72 hours after the employment has ended.

7
8 73. Plaintiff was not paid all of the wages due him upon termination, as
9 described in the previous allegations. In addition, Defendant failed to pay Plaintiff
10 all of his accrued vacation pay upon termination. These wages still have not been
11 paid prior to the filing of this action. Defendant's failure to pay said wages on time
12 or at all was willful within the meaning of Labor Code section 203.

13
14 74. Plaintiff is entitled to one day's wages for each day he was not timely
15 paid all wages due on and after the end of his employment, up to a maximum of 30
16 days' wages, plus all accrued vacation still unpaid.

17
18 [SEVENTH CLAIM FOR RELIEF]

19 [WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY]

20
21 75. Plaintiff realleges and incorporates by reference all prior allegations.

22
23 76. This Court has supplemental jurisdiction over this claim, as arising
24 under the same facts as the First and Second Claims for Relief. This Claim is plead
25 in the alternative to the First, Second and Fourth Claims. Plaintiff is unsure whether
26 the real reason for his termination was primarily his race or primarily his complaints
27 about illegal acts of defendant, but Plaintiff is sure that the real reason is one or both
28 of those, and that there was no legitimate, legal, reason for his termination.

1 77. Pursuant to California Education Code § 8152(e), the State of California
2 may only reimburse the Training Trust (through an LEA) for hours of instruction
3 actually provided to indentured apprentices under an approved apprenticeship
4 program, at a specified hourly rate per apprentice. Pursuant to Government Code
5 §§ 12650 and 12651, it is illegal to submit false claims to the State of California.
6 Pursuant to California Labor Code § 3075 and implementing regulations, and the
7 Fitzgerald Act and implementing regulations, Defendant was obligated to provide the
8 training for skills as stated in its application for approval to the DIR and DOL,
9 respectively.

10
11 78. Contrary to the law and public policy of California, Defendant routinely
12 submitted false statements to the State of California, claiming that apprentices had
13 been given hours of instruction which they did not in fact receive. Defendant knew
14 this information was false, and specifically instructed and required Plaintiff to put
15 this false information on the statements.

16
17 79. Defendant also fraudulently gave apprentices credit towards graduation
18 for classes they never took, or skills they did not have. In some cases, apprentices
19 were given credit for classes which the Training Trust did not even provide. These
20 fraudulent credits were given at the request of AGC members, including trustees of
21 the Training Trust, and not for any legitimate reason. This was contrary to the law
22 and the representations made by Defendant in its applications for approval to the
23 DIR and DOL.

24
25 80. Defendant also fraudulently back-dated the registration of some
26 apprentices, to a date before they were actually indentured. This was done at the
27 request of AGC members, so those AGC members could pay those employees at the
28 lower apprentice rate, even though they were not really indentured as apprentices at

1 that time. This was contrary to the law and the representations made by Defendant in
2 its applications for approval to the DIR and DOL.

3
4 81. Between November 2006 and September 2007, Plaintiff made several
5 complaints regarding the submission of fraudulent claims to the state, fraudulent
6 credits given, and fraudulent back-dating of the registration of apprentices. Plaintiff
7 was ordered to assist in these fraudulent activities, despite his protests. As a direct
8 result of his complaints, Plaintiff was retaliated against in the form of a substantial
9 increase in work-load, a negative evaluation, and wrongful termination in violation
10 of public policy.

11
12 82. In response to one of Plaintiff's complaints regarding Defendant's
13 fraudulent activities, Plaintiff was told by the Executive Director that if Plaintiff did
14 not like the way things were done, Plaintiff should leave.

15
16 83. In July 2007, Plaintiff met with Defendants' Trust Chairman and
17 Executive Director, expressed his concerns regarding Defendant's fraudulent
18 activities, and requested to meet with the Trustees. As a result, in August, 2007,
19 Plaintiff was given a substantially heightened workload, to be completed within one
20 week. As a direct result of Plaintiff's complaints, Defendant gave Plaintiff the only
21 negative work evaluation given to Plaintiff throughout his employment with
22 Defendant. Plaintiff was the only employee evaluated at this time.

23
24 84. In September 2007, Plaintiff again requested to meet with the Trustees
25 on September 17, 2007 to discuss Defendant's submission of false claims and other
26 inappropriate conduct described above. His request was denied.

27
28 85. On September 17, 2007, Plaintiff was terminated by Defendant from

1 his employment. The true reason for his termination was because he complained of
2 about Defendants' fraudulent activity, as set forth above.

3
4 86. As a direct and proximate result of the Defendants' willful, knowing,
5 intentional and wrongful termination of his employment, Plaintiff has suffered and
6 will continue to suffer substantial losses in earnings and other employment benefits.

7
8 87. As a proximate result of defendants' willful, knowing, and intentional
9 discrimination against Plaintiff, he has suffered and continues to suffer humiliation,
10 emotional distress, and mental and physical pain and anguish, all to his damage in a
11 sum according to proof.

12
13 88. Defendants took such discriminatory action with the intent to vex, injure
14 and annoy Plaintiff, to impose an unjust hardship upon him for asserting rights
15 under the law, in blatant, wanton, conscious, and callous disregard of his rights, and
16 to create a climate of fear to deter its other employees from asserting rights.
17 Accordingly, Plaintiff is entitled to compensatory and punitive damages, according
18 to proof at trial.

19
20 89. In addition, Plaintiff is entitled to an award of fees and costs for his
21 claim of wrongful termination.

22
23 [EIGHTH CLAIM FOR RELIEF]

24 [UNFAIR BUSINESS PRACTICES]

25 [CA BUSINESS & PROFESSIONS CODE § 17200 et seq.]

26
27 90. Plaintiff realleges and incorporates by reference all prior allegations.
28

1 91. This Court has supplemental jurisdiction over this claim, as arising
2 under the same facts as the Third Claim for Relief.

3
4 92. This claim is brought by Plaintiff on behalf of himself and the general
5 public, pursuant to Business and Professions Code §§ 17200, *et. seq.* The failures to
6 pay overtime, and the other conduct of the Defendants above constitute unlawful,
7 unfair and fraudulent business acts and practices, and unfair competition, within the
8 meaning of California Business and Professions Code §§ 17200 *et seq.* Plaintiff is a
9 "person" within the meaning of Business and Professions Code § 17204, with
10 standing to bring this suit for injunctive relief and restitution, to remedy the harm to
11 him and to vindicate the public interest.

12
13 93. Defendant has acted contrary to these public policies and has thus
14 engaged in unlawful and unfair business practices in violation of the Business and
15 Professions Code §§ 17200, *et seq.*, depriving Plaintiff of rights, benefits, and
16 privileges guaranteed to all employees under law. As a result, Defendant has been
17 unjustly enriched.

18
19 94. Business and Professions Code § 17203 provides that the Court may
20 restore an aggrieved party any money or property acquired by means of unlawful and
21 unfair business practices. Plaintiff seeks restitution of all unpaid wages, according to
22 proof.

23
24 95. Plaintiff is entitled to recover attorney fees and costs for bringing this
25 claim, pursuant to California Code of Civil Procedure § 1021.5.

26
27 / / /

28 / / /

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for Judgment against Defendant, as follows:

I. ON THE FIRST CLAIM FOR RELIEF:

A. Back pay, at his last rate of pay, from the date of his termination until judgment, together with interest;

B. Restoration or payment of all benefits to which Plaintiff would have been entitled at the time of his termination, from the date of his termination until judgment, together with interest;

C. Front pay of wages and benefits to which Plaintiff would have been entitled, calculated from the date of Judgment to the date upon which Plaintiff could reasonably be expected to obtain equivalent employment;

D. Damages for emotional distress caused by Plaintiff's illegal termination, according to proof;

E. Punitive damages, according to proof;

F. For attorney fees and costs of suit, pursuant to 42 U.S.C. § 1988(b); and

G. Such other relief which the Court may deem just.

/ / /

1 II. ON THE SECOND CLAIM FOR RELIEF:

2
3 A. Back pay, at his last rate of pay, from the date of his termination until
4 judgment, together with interest;

5
6 B. Restoration or payment of all benefits to which Plaintiff would have been
7 entitled at the time of his termination, from the date of his termination until
8 judgment, together with interest;

9
10 C. Front pay of wages and benefits to which Plaintiff would have been
11 entitled, calculated from the date of Judgment to the date upon which Plaintiff could
12 reasonably be expected to obtain equivalent employment;

13
14 D. Damages for emotional distress caused by Plaintiff's illegal termination,
15 according to proof;

16
17 E. Punitive damages, according to proof;

18
19 F. For attorney fees and costs of suit, pursuant to 42 U.S.C. § 2002e-5(k); and
20

21 G. Such other relief which the Court may deem just.
22
23

24 III. ON THE THIRD CLAIM FOR RELIEF:

25
26 A. For unpaid weekly overtime, at one-and-one-half times his regular rate of
27 pay, for all work from three years prior to the filing of this action, according to
28 proof;

1 B. For an equal amount of liquidated damages, pursuant to 29 U.S.C. §
2 216(b);

3
4 C. For attorney fees and costs, pursuant to 29 U.S.C. § 216(b); and
5

6 D. For such further relief as this Court may deem just and proper.
7

8 IV. ON THE FOURTH CLAIM FOR RELIEF:
9

10 A. Back pay, at his last rate of pay, from the date of his termination until
11 judgment, together with interest;
12

13 B. Restoration or payment of all benefits to which Plaintiff would have been
14 entitled at the time of his termination, from the date of his termination until
15 judgment, together with interest;
16

17 C. Front pay of wages and benefits to which Plaintiff would have been
18 entitled, calculated from the date of Judgment to the date upon which Plaintiff could
19 reasonably be expected to obtain equivalent employment;
20

21 D. Damages for emotional distress caused by Plaintiff's illegal termination,
22 according to proof;
23

24 E. Punitive damages, according to proof;
25

26 F. For attorney fees and costs of suit, pursuant to California Government
27 Code § 12965(b); and
28

1 G. Such other relief which the Court may deem just.

2
3 V. ON THE FIFTH CLAIM FOR RELIEF:

4
5 A. All unpaid hours worked, and the balance of the full amount of overtime
6 wages owed, pursuant to California Labor Code § 1194;

7
8 B. Interest on the overtime wages, from the dates they were due;

9
10 C. Reasonable attorney fees and costs pursuant to California Labor Code §
11 1194(a); and

12
13 D. Such further relief as this Court deems just and proper.

14
15 VI. ON THE SIXTH CLAIM FOR RELIEF:

16
17 A. Judgment for one day's wages for each day from termination to payment,
18 up to a maximum of 30 days' wages, at his last rate of pay;

19
20 B. Attorney fees and costs; and

21
22 C. Such further relief as this Court deems just and proper.

23
24 VII. ON THE SEVENTH CLAIM FOR RELIEF:

25
26 A. Back pay, at his last rate of pay, from the date of his termination until
27 judgment, together with interest;

1 B. Restoration or payment of all benefits to which Plaintiff would have been
2 entitled at the time of his termination, from the date of his termination until
3 judgment, together with interest;

4
5 C. Front pay of wages and benefits to which Plaintiff would have been
6 entitled, calculated from the date of Judgment to the date upon which Plaintiff could
7 reasonably be expected to obtain equivalent employment;

8
9 D. Damages for humiliation and emotional distress caused by Plaintiff's
10 illegal termination, according to proof;

11
12 E. Punitive damages, according to proof;

13
14 F. For attorney fees and costs of suit; and

15
16 G. Such other relief which the Court may deem just.

17
18 VIII. ON THE EIGHTH CLAIM FOR RELIEF:

19
20 A. For an Accounting and Restitution of the difference between the wages
21 actually paid Plaintiff, and the wages required by law to be paid within four years of
22 filing this complaint;

23
24 B. For a preliminary and a permanent injunction enjoining Defendant from
25 failing to pay overtime to Coordinators, and for threatening or punishing in any way,
26 employees who complain or testify about Defendant's illegal practices; and

27
28 / / /

1 C. For attorney fees and costs of suit, pursuant to California Code of Civil
2 Procedure § 1021.5; and

3
4 D. Such further relief as this Court may deem just and proper.
5

6
7 Respectfully Submitted, .

8
9 Dated: February 12, 2008

10 ALEXANDER B. CVITAN,
11 J. DAVID SACKMAN, and
12 STEVEN T. NUTTER, Members of
13 REICH, ADELL & CVITAN
14 A Professional Law Corporation

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28
By: 

J. DAVID SACKMAN
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury to the fullest extent permitted in this action,
including any claims by Defendants in this action.

Dated: February 6, 2008

ALEXANDER B. CVITAN,
J. DAVID SACKMAN, and
STEVEN T. NUTTER, Members of
REICH, ADELL & CVITAN
A Professional Law Corporation

By: 

J. DAVID SACKMAN
Attorneys for Plaintiff

EEOC Form 181-B (3/98)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Sohil Karimy
13099 Via Suena
Valley Center, CA 92082

From: San Diego Local Office
401 B Street
Suite 510
San Diego, CA 92101

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

488-2008-00198

Carmen Ortiz,
Investigator

(619) 557-7288

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice, or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

☐

More than 180 days have passed since the filing of this charge.

☒

Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

☒

The EEOC is terminating its processing of this charge.

☐

The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

☐

The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.

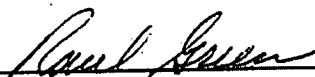
☐

The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



Raul G. Green,
Acting Director

2/11/2008
(Date Mailed)

Enclosures(s)

cc: Pete Saucedo
Human Resources Director
ASSOCIATED GENERAL CONTRACTORS OF AMERICA
P.O. Box 927870
San Diego, CA 92192

Natalia Bautista, Esq.
REICH, ADELL & CVITAN
3550 Wilshire Blvd., Ste. 2000
Los Angeles, CA 90010

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

1350 Front Street, Suite 3005 San Diego, CA 92101
(619) 645-2681 TTY (800) 700-2320 Fax (619) 645-2683
www.dfeh.ca.gov



February 4, 2008

SOPHIL KARIMY
13099 Via Suena
Valley Center, CA 92082

RE: E200708D1003-00-c
KARIMY/ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Dear SOPHIL KARIMY:

NOTICE OF CASE CLOSURE

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 18, 2008 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

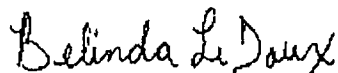
This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,



Belinda LeDoux
District Administrator

cc: Case File

Director
Human Resources/Personnel
ASSOCIATED GENERAL CONTRACTORS OF AMERICA
P.O. Box 927870
San Diego, CA 92192-7870

DFEH-200-43 (06/06)

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

**# 147668 - BH
* * C O P Y * *
February 14, 2008
15:29:57**

Civ. Fil Non-Pris
USAO #: 08CV0297 CIVIL FILING
Judge.: M. JAMES LORENZ
Amount.: \$350.00 CK
Check#: BC# 1331

Total-> \$350.00

**FROM: KARIMY V. ASSOCIATED GENERAL
CONTRACTORS OF AMERICA
CIVIL FILING**

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SOHIL KARIMY

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

Reich, Adell & Cvitan

(c) Attorney's (Firm Name, Address, and Telephone Number)

3558 Wilshire Blvd., Suite 2000, L.A., CA 90010 (213) 386-3860

DEFENDANTS

Associated General Contractors of America - San Diego Chapter, Inc., Apprenticeship & Training Trust Fund

County of Residence of First Listed Defendant

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. §§ 1981, 2002e-2, 29 U.S.C. § 216(b)

Brief description of cause:
 Employment Discrimination / Fair Labor Standards Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ > \$100,000.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/12/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

147668

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE